

**STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS**

**FOR THE MINNESOTA DEPARTMENT OF HUMAN SERVICES**

**In the Matter of the  
Family Foster Care License  
Revocation Appeal of  
John and Nira Buchanan**

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge George H. Elwell at 9:30 a.m. on May 22, 1996, in courtroom #7 of the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota. There were no post-hearing submissions and the record closed at the conclusion of the hearing on May 22, 1996.

Vicki Vial-Taylor, Assistant Hennepin County Attorney, 2000 Government Center, Minneapolis, Minnesota 55487, appeared on behalf of the Hennepin County Department of Children and Family Services ( the Local Agency ) and the Minnesota Department of Human Services ( the Department ). John and Nira Buchanan ( the Licensee ) appeared on their own behalf, without benefit of counsel.

This Report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner of Human Services. Parties should contact Maria R. Gomez, Commissioner, Minnesota Department of Human Services, Second Floor Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3815, to ascertain the procedure for filing exceptions or presenting argument.

**STATEMENT OF ISSUE**

The issue in this case is whether the Department of Human Services' revocation of John and Nira Buchanan's foster care license should be affirmed.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

#### FINDINGS OF FACT

1. John W. and Nira Buchanan were applicants for family foster care licensure; he completing and signing a Foster Care Questionnaire (Exhibit 3, page 2) on October 9, 1992, and a joint Application with Nira Buchanan (Exhibit 3, page 1) on October 15, 1992.

In the questionnaire, in response to the question:

Are any of your own minor children now living away from your home?

Mr. Buchanan checked the box marked No . Likewise, in response to the question:

Regardless of how long ago, or where you were living, have you or any household member:

Yes	No	
_____	_____	Been charged with or convicted of any offense in municipal, district or federal court (?)

he checked the space marked No. (Exhibit 3, page 2)

2. Following the filing of the application papers, local police department records were checked and a Minneapolis Police Department Arrest/Citation Report was found to be of record. This document (Exhibit 6) demonstrates that John Wesley Buchanan, DOB 7/10/50, was arrested, booked and charged with the misdemeanor crime of petty theft. This charge was later continued by the court for dismissal in one year if no further charges occurred. (Exhibit 6, page 2) The matter was later dismissed.

3. During an oral interview with a Hennepin County Foster Care Licensing Social Worker, which followed as part of the application process, Mr. Buchanan reconfirmed the answers he gave in writing, as outlined in paragraph #2 herein, and, when confronted with the arrest report (Exhibit 6), he emphatically denied being the party charged in that report.

4. Pursuant to the application process in October 1992, the Buchanans were granted a license to provide family foster care in their family home.

5. In the process of applying for relicensure on June 1, 1994, Mr. Buchanan completed forms in which he answered the same questions in the same manner as described in paragraph #2 above and in an ensuing oral interview affirmed the same negative answers. (Exhibit 4) The Buchanans were thereupon relicensed.

6. In May 1995, pursuant to certain allegations having been reported, a Hennepin County Foster Care Licensing Social Worker commenced an investigation to help determine whether or not the Buchanan's foster care license should be revoked.

7. In the course of investigation, the said Licensing Social Worker turned up a Stipulation of Paternity signed by John Wesley Buchanan III, filed in Hennepin County District Court on January 27, 1995, duly admitting to being the father of John Wesley Buchanan IV, born June 21, 1977. (Exhibit 7)

8. On June 23, 1995, Mr. Buchanan was interviewed by the said Licensing Social Worker wherein he stated to her that he had never served time in prison and that there was no blemish on his record locally or in Tennessee. He then signed a Release of Information form, authorizing a search of criminal records in Tennessee. When confronted with the paternity information cited above, he admitted that he had a 17 year old son by another woman and that he had misreported this fact in the application process.

9. In the further course of investigation, and utilizing the signed Release of Information form, the Licensing Social Worker turned up court records of the State of Tennessee wherein John Wesley Buchanan III, plead guilty to two counts of attempting to commit a felony by attempting to sell a controlled substance, to which he was sentenced to no less than two and no more than five years confinement at hard labor for each crime, to be served concurrently. (Exhibit 5)

10. The said investigation also turned up, within Hennepin County Court File #DA213082, an Order For Protection With Children, dated May 26, 1995, wherein appeared John Wesley Buchanan III, as respondent, and his child's mother, Katherine Bass, as petitioner, and at which time the Court made findings:

That respondent told petitioner that he was going to kick her ass and then said, Better yet, I'll kill both your asses, speaking of petitioner and the parties' son.

**The petitioner and the child walked away, and the parties became involved in an argument with respondent calling petitioner names.**

**That respondent's actions caused petitioner to fear harm, and petitioner is entitled to an order of protection. (Exhibit 8)**

**11. On September 4, 1995, all foster children were removed from the Buchanan foster home, pursuant to an Agency decision to recommend revocation of the Buchanans' foster care license.**

**12. On October 30, 1995, a letter (Exhibit 2) was directed to the Commissioner of the Department of Human Services, over the signatures of the Foster Care Program Director, Hennepin County Department of Children and Family Services, its Foster Care Supervisor and the Senior Foster Care Licensing Social Worker, recommending the revocation of John and Nira Buchanan's foster care license based upon findings that John Buchanan repeatedly and knowingly provided false information to the Hennepin County Foster Care Program and also upon the findings of Hennepin County District Court, Family Division Referee, to the effect that Mr. Buchanan's threatening behavior, including a threat to kill his son and his son's mother, who petitioned the Court for a Protection Order, put her in fear of harm and entitled her to such Order and further that all these findings effectively violate Minn. Rules pt. 9545.0090(1)(6)(12) and pt. 9545.0100.**

**13. In a letter dated January 26, 1996, the State Department of Human Services notified the licensees that the Commissioner was revoking their license to provide family foster care based upon the recommendation of Hennepin County Social Services, citing reasons substantially as reflected in paragraph 12 above and also informing them of their right to appeal the revocation decision and request a contested case hearing. (Exhibit 1)**

**14. On February 15, 1996, Mr. Buchanan directed a letter to the agency (Exhibit 9) proclaiming, first, that he did not lie on the application:**

**I may have misread it thinking it only meant the State of Minnesota concerning a felony.**

**but going on to admit that he did serve time in Tennessee.  
asserts:**

**Secondly, he**

**I've lived in Minnesota for 17 years now and my record is clean. As for the felony in Hennepin County Court dated September 1, 1988 that is false. Caroline Krinke of the Hennepin County Social Services had ask about that doing the application.**

I said to her she could take a picture of me to match it to the mugshots and I would also go to check for fingerprints, she never got back to me.

Thirdly,

There is a document on me indicating harm to the petitioner that to is false. The mother of my son brought these charges on me something she trump up 20 years ago. I've lived in this State for 17 years and have not cause a problem.

This letter was given the effect of a timely request for appeal of the revocation and for a contested case hearing. The matter was duly set on for hearing before an Administrative Law Judge accordingly.

15. At the contested hearing, Mr. Buchanan submitted a document which certifies that, . . . there is no arrest history at the Hennepin County Adult Detention Center on . . . John Wesley Buchanan, Jr., DOB: 7/10/50" signed by an Identification Clerk, ADC Records Unit, Hennepin County Sheriff's Office. (Licensees' Exhibit A)

Also, Mr. Buchanan testified that the matter before the Family Court Referee, which resulted in the Protective Order, arose from allegations that were totally false and motivated by spite on the part of his son's mother. He characterized it as a stupid incident out of a mere domestic dispute which was precipitated by an unreasonable request that he should immediately provide insurance so that his son could drive a car. With regard to his failure to disclose the Tennessee convictions, he explained that they were so long ago he overlooked them.

## **CONCLUSIONS**

1. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction over this matter pursuant to Minn. Stat. § 14.50 and 245.08 (1992).

2. The Notice of and Order for Hearing is proper in all respects and the Local Agency and the Department have complied with all substantive and procedural requirements of law and rule.

3. Minn. Stat. § 245A.08, subd. 3(a) (1992), provides as follows:

At a hearing regarding suspension, immediate suspension, or revocation of a license for . . . foster care, the commissioner may demonstrate reasonable cause for action taken by submitting statements, reports, or affidavits to substantiate

the allegations that the license holder failed to comply fully with applicable law or rule. If the commissioner demonstrates that reasonable cause existed, the burden of proof in hearings involving suspension, immediate suspension, or revocation of a . . . foster care license shifts to the license holder to demonstrate by a preponderance of the evidence that the license holder was in full compliance with those laws or rules that the commissioner alleges the license holder violated, at the time that the commissioner alleges the violations of law or rules occurred.

This allocation of the burden of proof withstood a due process challenge in In re Judith Cullen, No. C4-88-2609 (Minn. Ct. App. July 18, 1989).

4. Minn. Stat. § 245A.07, subd. 3 (1992), authorizes the Commissioner to suspend, revoke, or make probationary a license where the license holder fails to comply fully with applicable law or rules. The statute further provides that, (w)hen applying sanctions authorized under this section, the commissioner shall consider the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health safety, or rights or persons served by the program. Minn. Stat. § 245A.08, subd. 1 (1992). In addition. Minn Stat. § 245A.04, subd. 6 (1992), provides that, (b)efore granting, suspending, revoking, or making probationary a license, . . . (t)he commissioner . . . shall consider facts, conditions, or circumstances concerning the program's operation, the well-being of persons served by the program, consumer evaluations of the program, and information about the character and qualifications of the personnel employed by the applicant or license holder.

5. Minnesota Rules provide, in pertinent part, as follows:

Minn. R. 9545.0090b(1). . . . each family caring for children shall . . . have established and be comfortable with their own identity to the degree that meeting their own needs does not interfere with their meeting the needs of foster children.

Minn R. 9545.0090B(6). . . . each family caring for children shall . . . have the ability to deal with anger, sorrow, frustration, conflict, and other emotions in a manner which will build positive interpersonal relationship rather than in a way that could be emotionally or physically destructive to other persons.

6. The Local Agency and the Department have shown, through an episode depicted in court findings later supplemented by Licensee's testimony, that there is good cause to believe that Licensee John Buchanan's inability to deal with anger, frustration and conflict could well be emotionally or physically destructive to other persons and would likely interfere with Licensee's meeting the needs of foster children. Also shown by the evidence is a seemingly chronic

tendency by Mr. Buchanan to deny fault and misrepresent facts to put himself in a better light in the eyes of others, all of which give reasonable cause to believe that he suffers discomfort with self identity and would likely put his own needs above meeting the needs of foster children.

7. Minnesota Rules further provide, in pertinent part, as follows:

Minn. R. 9545.0090B(12). . . . each family caring for children shall . . . have the ability to work with the agency and other community resources.

Minn. R. 9545.0100. The relationship between the FFH and the agency must be one of mutual trust and respect.

8. When it is considered that Mr. Buchanan has repeatedly failed to disclose matters which most would regard as being among the important affairs of life (the existence of a son and of criminal charges and convictions) and that he affirmatively denied the truth when confronted with it and that he procured and submitted into evidence while under oath a document intended to mislead, it may well be concluded that he habitually relies on falsehood rather than truth and reason to help solve his problems and to reach his objectives. There is reasonable cause to believe that this demonstrated proclivity to deceive disables Licensee John Buchanan from an ability to work with the Local Agency and other community resources and irreparably undermines the mutual trust that is essential between the family foster home and the agency.

9. Minn. Stat. § 245A.07, SANCTIONS, further provides in Subdivision 3 thereof.

The commissioner may . . . revoke . . . a license if the license holder . . . knowingly gives false or misleading information to the commissioner in connection with an application for license or during an investigation.

On the basis of the foregoing statute, standing alone, the Commissioner and her Department would have the authority to revoke the Buchanans' license, having established compelling proof of such false and misleading information, knowingly given.

10. The Local Agency and the Department have advanced evidence establishing reasonable cause to believe that Licensee John Buchanan violated Minn. Rules pts. 9545.0090B(1)(6)(12) and pt. 9545. 9545.0100. The Licensees have not shown by a preponderance that they were in full compliance at the time of the alleged violations.

**Based upon the foregoing Conclusions and for the reasons discussed in the attached Memorandum, the Administrative Law Judge makes the following:**

**RECOMMENDATIONS**

**IT IS HEREBY RESPECTFULLY RECOMMENDED that the revocation of John and Nira Buchanan's foster care license be affirmed.**

**Dated this 31st day of May, 1996.**

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**George H. Elwell  
Administrative Law Judge**

**NOTICE**

**Pursuant to Minn. Stat. § 14.62, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.**

**Reported: Taped (1 tape)**

## **MEMORANDUM**

**From Mr. Buchanan's false statement that he had no minor child living away from his own home, it can reasonably be inferred that any discovery of the nature of his relationship with his son and the boy's mother would not put him in a good light as a foster care license applicant. He gambled on concealment vs. disclosure with explanation. If, as he now claims, this episode which led to a Protective Order was merely a domestic squabble exaggerated out of spite, the better choice would have been to disclose and rely on impartial investigation of the facts. That he did not do so persuades that the true facts are not in his favor.**

**The findings of the Family Court Referee reflect both animosity by Mr. Buchanan toward his minor son and maladaptive behavior in conflict resolution. Viewed as predictors of future behavior, these factors in his attitude and nature are squarely incompatible with those attitudes and qualities called for in the cited rules relating to foster care parents. This noncompliance amounts to a violation of these rules.**

**When he falsely stated that he'd had no criminal charges or convictions of any offenses, in any courts, any time, anywhere, this was double deceit in that he was in fact charged with two attempted felonies of which he was convicted and also a misdemeanor theft of which he was not ultimately convicted. This double falsehood was not only repeated in written form but was emphatically proclaimed in an oral interview with agency personnel.**

**Even after the drug related convictions were discovered by the Local Agency, Mr. Buchanan made the overt effort to procure a document showing that he had no arrest history in the records of the Hennepin County Adult Detention Center. This was an apparent effort to verify his earlier claim that he is a different person from the John Wesley Buchanan, DOB 7/10/50, who is the**

subject of the Minneapolis Police Department Arrest/Citation Report charging misdemeanor theft. In submitting this document into evidence at the hearing, he mistakenly assumed that this Administrative Law Judge would adopt the intended inference, to wit: that all adult persons charged with theft in Hennepin County must end up in the county jail as a result of the arrest and booking procedure; hence, if the Licensee were never lodged in jail, he must never have been so charged. The faulty premise leads to an erroneous conclusion. The title of this M.P.D. form is self explanatory. In situations where an arrest occurs and a charge is made via citation, the transaction is memorialized in this report, hence, Arrest/Citation Report. When a person is charged by citation he or she appears in court of their own volition as opposed to being brought before the court while in custody. Here it is readily apparent Mr. Buchanan was booked, not jailed, but cited with petit

theft which generated this report.

A similarly cavalier assumption was also made by Mr. Buchanan when he emphasized to the Licensing Social Worker that there was no blemish on his record, here or in Tennessee, and that he had nothing to hide, when at the same moment

he was furnishing her with a Release of Information form, gambling that it would not be successfully used.

This cavalier and blatant manner of risk-taking when delivering his false or misleading statements is in sharp contrast with his explanatory terms later used after discovery, such as: overlooked, may have misread it and it was twenty years ago, after all. Had Mr. Buchanan initially disclosed the true facts in the application process with explanations at that time of mitigating or extenuating

circumstances, the outcome would not be nearly so clear as it now is relating to Mr. Buchanan's fitness and ability to work with and cooperate with the Local Agency and to avoid allowing his own personal needs to supersede the needs of children under his foster care.

Under all of the facts and circumstances of the case, the Administrative Law Judge concludes that the revocation of the Licensees' foster care license was appropriate and well supported by the evidence and should be affirmed.

**G.H.E.**